

plane [substantially diametric relative to] containing the axis of said well.

25. (Once Amended) The combination according to claim 24 which further comprises a short [external] rib on said bottom extending away from said second stretch.

26. (Once Amended) In combination, a hollow, apertured probe having a blunt tip, a cap, a container having a neck having external means for detachably engaging said cap, said cap being shaped to fit over said neck and comprising a top and a skirt depending from said top internal means on said skirt to engage said external means to hold said cap on said neck, said top being formed with a central wall having a side wall and a bottom, at least one scoreline positioned on said bottom, said blunt tip engagable with said bottom to split said scoreline so said probe may enter said container.

27. The combination of claim 26 in which said probe seals against said well.

28. The combination of claim 27 wherein said probe seals against said sidewall.

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendments, Claims 1-28 are pending in the application, with Claims 1 and 26 being the independent claims. Claims 1, 3, 6, 8, 18, 22, and 24-26 have been amended. Support for the subject matter of the amended claims is contained in the

application as originally filed. Because the foregoing changes introduce no new matter, their entry is respectfully requested.

Based on the above Amendment and the following Remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Certain claims were amended to correct certain errors in the claims as originally filed. In particular:

Claim 1, line 9, "a probe" was changed to --a probe having a blunt end-- for reasons discussed below.

Claim 3, line 3, "lip" was changed to --neck-- for proper antecedent;

Claim 6, lines 3-4, "cooperable with said first orientation means" was deleted because the second orientation means (*e.g.*, tab 38) need not be cooperable with the orientation means on the container;

Claim 8, line 3, "prevent" was changed to --allow-- because removing a portion of the cap skirt allows rather than prevents removal of the cap;

Claim 18, line 2, "external" was deleted because the rib on the bottom need not be external;

Claim 22, line 1, "wail" was changed to --well-- to correct a typographical error;

Claim 24, "substantially diametric relative to said well" was changed to --containing the axis of said well-- to correspond with Claim 17 as originally filed;

Claim 25, "external" was deleted because the rib on the bottom need not be external; and

Claim 26, last line, "neck" was changed to --container--.

Rejections under 35 U.S.C. § 112

The Examiner has rejected Claims 1-28 under 35 U.S.C. §112, first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors, at the time the application was

filed, had possession of the claimed invention, The Examiner considers the limitation “a plurality of scorelines” and the limitation “positioned on the bottom” as new matter. Applicants respectfully traverse the Examiner’s rejection of Claims 1-28.

One difference between the new claims and the corresponding original claims of U.S. Patent No. 5,687,865 (“the ‘865 patent”) is that the new claims call for a cap having at “least one scoreline”. *See, e.g.*, Claim 1, line 8. The Examiner’s position is that the ‘865 patent does not provide support for a plurality of scorelines. *See* Office Action, page 3, paragraph 5. The Examiner correctly considers the new claims to read on caps that have a plurality of scorelines, however, the Examiner considers the original claims to read only on caps having just one scoreline.¹ *Id.*

Applicants respectfully submit that the ‘865 patent neither expressly includes nor precludes a plurality of scorelines. *See Beale v. Schuman*, 212 U.S.P.Q. 291, 293 (Bd. Pat. App. & Int. 1980)(although the illustrated embodiment only disclosed gas passages on cylinder walls, the Board found nothing in the disclosure which requires the gas passages to be confined solely to the cylinder walls which would preclude claiming gas passages on both the cylinder and a piston); *Ex Parte Froschle and Schreiber*, 223 U.S.P.Q. 190, 191 (Bd. Pat. App. & Int. 1984)(“Our review of the disclosure reveals that, although the multiple driver system is preferred, it neither expressly includes nor precludes single drive systems.”). Inventors are not required to limit their claims to a specific example or examples disclosed in their application but are entitled to claim their invention as broadly as the prior art permits. *Beale*, 212 U.S.P.Q. at 293 (*citing In re Moore*, 169 U.S.P.Q. 236 (C.C.P.A. 1971)). In fact, the predecessor court of the Federal Circuit has acknowledged the general rule that “an applicant in a mechanical case is allowed claims, when the art permits, which cover more than the specific embodiments shown.” *Beale*, 212 U.S.P.Q. at 294 (*citing In re Newton*, 163 U.S.P.Q. 34, 39 (C.C.P.A. 1969)).

In the present application, new claims which read on caps that have a plurality of

¹Although it is Applicants’ position that caps including all of the limitations of the original claims and other additional elements, including additional scorelines, fall within the scope of the original claims, Applicants present arguments *in arguendo* that a cap having a plurality of scorelines do not fall within the scope of the claims of the original patent

scorelines as well as caps that have just one scoreline are not precluded by the requirements of 35 U.S.C. § 112, first paragraph. *See Beale*, 212 U.S.P.Q. at 294. As the present reissue application is of a mechanical nature, Applicants need not limit the new claims to precisely what is expressly disclosed by a specific embodiment. *Beale*, 212 U.S.P.Q. at 294. More particularly, Applicants need not limit the new claims to a cap having just one scoreline. *Id*; *See also Ex parte Cassel*, 82 U.S.P.Q. 108, 110 (Bd. Pat. App. & Int. 1948) (“There is no question that applicant has a disclosure of using one elastomer, and under the circumstances of this case, we see no objection to copying [‘at least one elastomer’] from the Kienle patent even though applicant has no disclosure of using more than one elastomer.”) Accordingly, Applicants submit the limitation “a plurality of scorelines” is not new matter.

Another difference between the new claims and the corresponding original claims of the ‘865 patent is that the new claims call for a cap having at one scoreline “positioned on [the] bottom” of a well of the cap. *See, e.g.*, once amended Claim 1, lines 8-9. Similarly, the Examiner’s position is that the prior patent does not provide support for a scoreline positioned only on said bottom. *See Office Action of July 7, 2000, page 3, paragraph 5.* Applicants respectfully submit that the ‘865 patent neither expressly includes nor precludes a scoreline positioned only on the bottom. *See Beale*, 212 U.S.P.Q. at 293; *Froschle*, 223 U.S.P.Q. at 191. Inventors are not required to limit their claims to a specific example or examples disclosed in their application but are entitled to claim their invention as broadly as the prior art permits. *Beale*, 212 U.S.P.Q. at 293 (*citing In re Moore*, 169 U.S.P.Q. 236 (C.C.P.A. 1971)). In fact, the predecessor court of the Federal Circuit has acknowledged the general rule that “an applicant in a mechanical case is allowed claims, when the art permits, which cover more than the specific embodiments shown.” *Beale*, 212 U.S.P.Q. at 294 (*citing In re Newton*, 163 U.S.P.Q. 34, 39 (C.C.P.A. 1969)).

In the present application, new claims which read on caps that have a scoreline positioned only on a bottom of the well of the cap as well as caps that have a scoreline extending along a side wall and across the bottom of the well is not precluded by the requirements of 35 U.S.C. § 112, first paragraph. *See Beale*, 212 U.S.P.Q. at 294. As the present reissue application is of a mechanical nature, Applicants need not limit the new claims to precisely what is expressly

disclosed by a specific embodiment. *Beale*, 212 U.S.P.Q. at 294. More particularly, Applicants need not limit the new claims to a cap having a scoreline extending along a side wall and across the bottom of the well. *Id.* Accordingly, Applicants submit the limitation “one score line positioned on said bottom” is not new matter.

Should the Examiner maintain this rejection of Claims 1-28 under 35 U.S.C. §112, first paragraph, Applicants respectfully request citation of authority in support of the Examiner’s position.

Rejections under 35 U.S.C. § 102

Claims 1, 2, 5, 9, 15, and 16

The Examiner has rejected Claims 1, 2, 5, 9, 15, and 16 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 4,022,258 to Steidley (“the Steidley patent”). The Steidley patent lacks the cap for a container neck of the present invention including a well and at least one scoreline positioned on a bottom of the well, whereby a probe having a blunt tip forced into the well splits the bottom along the scoreline, as is called for by amended Claim 1.

The Steidley patent does not disclose a cap having a scoreline which is split by a blunt probe. Instead, the Steidley patent discloses a ported closure having a bottom wall with a dome-shaped upper surface which facilitates proper positioning and cutting action of a cooperating piercing spike. *See* column 2, lines 20-22; FIGS. 2 and 3. Namely, dome-shaped bottom wall 15 properly positions angular cutting edge 25 of spike 23 such that it pierces bottom wall 15 in a manner that results in the formation of a flap which is pushed aside but not detached from the closure. *See* column 2, lines 28-33. Bottom wall 15 remains connected to closure 10 as a flap 36 and thus is not released into the fluid within bottle 16. *See* column 5, lines 31-34.

In contrast, the cap of the present invention allows removal of a bottle from a dispenser because a well of the cap at least partially closes to reduce the amount of water which may flow out of the bottle while it is being removed from the dispenser. *See* paragraph bridging columns 2 and 3. In particular, the cap of the present invention includes a well 46 and a scoreline 51 positioned on a bottom of the well, whereby a dispenser probe having a blunt tip forced into the well splits the bottom along scoreline 51. *See* FIG. 5. Once the bottle is removed from the

dispenser, the halves of well 46 come together by reason of the resiliency of the material of which the cap is molded. *See* column 5, lines 3-5. The cap of the present invention has at least one feature that is simply not disclosed, taught, nor suggested by the Steidley patent: The cap of the present invention inhibits substantial leakage *after* the dispenser probe is removed. *Id.*

For at least this reason, Applicants respectfully submit that the Steidley patent does not anticipate presently amended Claim 1. Applicants submit that Claims 2, 5, 9, 15, and 16, which depend from Claim 1, are allowable over the cited art for at least the same reason noted above.

Double Patenting

Claims 1-28

The Examiner has rejected Claims 1-28 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-12 of U.S. Patent No. 5,513,763 to Adams *et al.* ("the Adams patent") in view of U.S. Patent No. 5,202,093 to Cloyd ("the Cloyd patent"). The Adams patent and the Cloyd patent, taken individually or combined, fail to disclose or suggest the claimed container neck including a well and at least one scoreline positioned on a bottom of the well, whereby a probe having a blunt tip forced into the well splits the bottom along the scoreline, as is called for by amended Claims 1 and 26.

The Adams patent does not teach or suggest a scoreline. Instead, the Adams patent discloses a plug 51 which is slidable within well 46. *See* column 4, lines 9-10; FIGS. 3 and 4. In fact, the Adams patent teaches away from the scoreline of the present invention because plug 51 disclosed by the Adams patent is discrete from well 46, and thus there is no motivation to split any portion of the well.

The Cloyd patent likewise fails to disclose or suggest a scoreline. The Cloyd patent instead discloses a sealing cap 12 with a one way valve. A pair of converging inclined walls 28 are truncated to form a pair of lips 30 separated in part by a slit opening 32. *See* column 3, lines 5-10; FIGS. 2-4. The Cloyd patent actually teaches away from the present invention because it discloses that any tendency for slit opening 32, which is "molded in" or cut after molding, to remain open after manufacture will be overcome when cap 12 is placed on a container. *See*

column 4, lines 44-51. Because slit opening 32 is a permanent opening, a secondary stopper 43 is provided on cap 12 to further safeguard against leakage of the liquid within container 10.

In contrast, the cap of the present invention provides a fluid-tight seal until well 46 is split along scoreline 51 when a consumer initially installs a container with cap 21 on a dispenser. *See* column 4, lines 63-66.

For at least these reasons, Applicant respectfully submits that the Adams and Cloyd patents do not render presently amended 1 and 26 obvious. Applicant submits that Claims 2-25, which depend from Claim 1, and Claims 27 and 28, which depend from Claim 26, are allowable over the cited art for at least the same reasons noted above.

Other Matters

A cumulative supplemental reissue declaration pursuant to 37 C.F.R. § 1.175(b)(1) will be submitted once the present application is in condition for allowance. M.P.E.P. § 1444.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, the personal communication will expedite prosecution of this application, the Examiner is invited to telephone Victor E. Johnson at the number provided below.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extension of time or additional claims, and/or credit any overpayment to Deposit Account No. 06-1300 (Order No. RI-61182/RBC).

PATENT

RI-61182/RBC/VEJ

Prompt and favorable consideration of this Amendment and Response is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert B. Chickering", is written over a horizontal line.

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